

Applicants : Jerry S. Brown *et al.*  
Serial No. : 10/864,003  
Filed : September 16, 2003  
Page : 4 of 7

Attorney Docket No.: Navy Case 84658

### REMARKS

Claims 16-18 and 23-30 are pending in this application. By this Amendment, claims 21-22 are cancelled without prejudice to or disclaimer of the subject matter contained therein, and claims 16, 17 and 30 are amended. In particular, claim 16 is amended to recite features supported in the specification at, for example, page 5, lines 2-7 and page 13, lines 3-8 (corresponding to paragraphs [0013] and [0030] of U.S. Patent Application Publication 2005/0059566) and incorporated from claims 17 and 30, which are amended for consistency. No new matter is added by any of these amendments.

Claims 1-15, 19 and 20 were previously withdrawn from consideration as being drawn to a non-elected Group and subsequently cancelled. Reconsideration based on the following remarks is respectfully requested.

#### **I. Amendment Entry After Final Rejection**

Entry of this amendment is proper under 37 CFR §1.116 because the amendments: a) place the application in condition for allowance for all the reasons discussed herein; b) do not raise any new issues requiring further search or consideration; c) place the application in better condition for appeal if necessary; and d) address formal requirements of the Final Rejection and preceding Office Action.

The foregoing amendments do not raise any new issues after Final Rejection. Accordingly, Applicants respectfully request entry of this Amendment.

#### **II. Applicants' Response to Advisory Action**

The January 13, 2006 Advisory Action stated that the January 3, 2006 Amendment After Final Rejection to further recite for the emulsion as "including surfactant" in claim 16 would not be entered. The Advisory Action further declared that the arguments accompanying the amendments were erroneous due to such teachings found in U.S. Patent 6,656,919 to Baugh *et al.* ("Baugh") applied in the November 4, 2005 Final Office Action.

Applicants : Jerry S. Brown *et al.*  
Serial No. : 10/864,003  
Filed : September 16, 2003  
Page : 5 of 7

Attorney Docket No.: Navy Case 84658

Applicants' representative acknowledges the error in interpreting Baugh and hereby withdraws the previous assertion with apologies for any undue burdens imposed on the Examiner that resulted therefrom.

### III. Obviousness Rejection under 35 U.S.C. §103

The Final Office Action rejects claims 16-18 and 21-30 as being allegedly obvious under 35 U.S.C. §103(a) over Baugh in view of U.S. Patent 6,369,288 to Brown and rejects claims 17, 21, 22 and 30 as being allegedly obvious under 35 U.S.C. §103(a) over Bough in view of Brown and further in view of U.S. Patent 5,462,692 to Roesler *et al.* ("Roesler"). These rejections are rendered moot with respect to claims 21 and 22, and are respectfully traversed with respect to the remaining claims.

Applicants' claims are directed generally, for example, a method for decontaminating a chemical or biological warfare agent by a microemulsion composition. In particular, independent claim 16 recites, *inter alia*, "providing a microemulsion composition having a microemulsion, paracetyl borate a solid source of peroxycarboxylic acid dissolved in the microemulsion and a germinant in combination with the solid peroxycarboxylic acid within the microemulsion." Applicants respectfully submit that Baugh and Brown, alone or in combination, do not describe or suggest paracetyl borate, and that Roesler does not compensate for this deficiency. This argument also applies to claims 17, 18 and 23-30 based on their dependence from claim 16.

Instead, Baugh discloses a method for rendering bacterial endospores harmless by activation to germinate and convert the endospores to vegetative cells with subsequent application of a germicide to kill the vegetative cells. In particular, Baugh teaches germinating the endospores by sublethal heating or by adding a germinant. See, *e.g.*, col. 6, lines 23-34; col. 7, lines 24-37 of Baugh. Further, Baugh teaches vegetative germicides, such as phenolics, halogens, alcohols, heavy metals, quaternary ammonium salts, organic acids, aldehydes, gaseous chemosterilizers and oxidizing agents. See, *e.g.*, col. 8, lines 25-36 of Baugh. As asserted in the Advisory Action and acknowledged herein, Baugh further teaches application of a surfactant to germicides. See, *e.g.*, col. 10, line 60 – col. 11, line 11 of Baugh.

Applicants: Jerry S. Brown *et al.*  
Serial No.: 10/864,003  
Filed: September 16, 2003  
Page: 6 of 7

Attorney Docket No.: Navy Case 84658

As admitted in the Final Office Action at page 4, however, Baugh fails to teach paracetyl borate for its source of peroxy-carboxylic acid. Applicants assert that Brown and Roesler do not compensate for this deficiency.

Specifically, Brown discloses a method for applying a decontamination solution to neutralize a chemical and/or biological warfare agent, such as peroxy-carboxylic acid. In particular, Brown teaches generating the agent by mixing a peroxygen compound, such as hydrogen peroxide, with bleach. See, *e.g.*, col. 2, lines 35-54; col. 3, lines 4-13 of Brown. There is no teaching or suggestion in Brown for including paracetyl borate as the peroxy-carboxylic acid.

Further, Roesler fails to compensate for the deficiencies of Baugh and Brown. Instead, Roesler is directed providing paracetic acid in the form of solid acetyl peroxoborate compounds for cleaning applications, *e.g.*, detergent, cleaning agent, bleaching agent, disinfectant compositions, and as an oxidizing agent in organic synthesis. See *e.g.*, col. 4, lines 17-35 of Roesler. In particular, Roesler discloses chemical structures derived from acetyl groups, oxygen and borate. See, *e.g.*, col. 3, lines 11-41 of Roesler. Cleansing operations, which Roesler addresses, are distinguishable from warfare agent decontamination, as provided in Applicants' claims and in teachings by Baugh and Brown. Thus, an artisan of ordinary skill would not have been motivated to incorporate paracetyl borate production from Roesler for detergent to decontaminating chemical and biological warfare agents absent hindsight from Applicants' disclosure.

A *prima facie* case of obviousness for a §103 rejection requires satisfaction of, *inter alia*, that there must be some suggestion or motivation either in the references or knowledge generally available to modify the references or combine reference teachings, and a reasonable expectation of success. See MPEP §706.02(j). Because Roesler has separate and distinct applications distinguishable from Baugh and Brown, and thereby no expectation that Roesler's teachings could be successfully applied to either Baugh or Brown to achieve any form of weapons agent decontamination. Applicants submit that the Final Office Action fails to satisfy these requirements with Baugh, Brown and Roesler.

Applicants : Jerry S. Brown *et al.*  
Serial No. : 10/864,003  
Filed : September 16, 2003  
Page : 7 of 7

Attorney Docket No.: Navy Case 84658


For at least these reasons, Applicants respectfully assert that the independent claim is patentable over the applied references. The dependent claims are likewise patentable over the applied references for at least the reasons discussed, as well as for the additional features they recite. Consequently, all the claims are in condition for allowance. Thus, Applicants respectfully request that the rejection under 35 U.S.C. §103 be withdrawn.

#### IV. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,



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